

STATE OF MICHIGAN
COURT OF APPEALS

LEON RENDER and DARRYL JONES,

Plaintiffs-Appellants,

v

CITY OF SOUTHFIELD,

Defendant-Appellee,

and

JAMES CRAIGIE, NANCY CRAIGIE,
DEBORAH GOTTSCHALK, SBC
COMMUNICATIONS, INC., SBC
TELEHOLDINGS, INC., COMCAST, COMCAST
CABLE OF INDIANA/MICHIGAN/TEXAS I,
LLC, COMCAST CABLEVISION, and
COMCAST OF OAKLAND COUNTY, INC.,

Defendants.

UNPUBLISHED

April 26, 2007

No. 272381

Oakland Circuit Court

LC No. 2005-069410-NO

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting summary disposition in favor of defendant under MCR 2.116(C)(7) (claim barred by collateral estoppel). We reverse and remand for further proceedings. This appeal is being decided without oral argument. MCR 7.214(E).

This case arises out of an automobile accident between a vehicle driven by plaintiff Render and a city of Southfield ambulance. Plaintiff Jones was a passenger in plaintiff Render's vehicle. As a result of the accident, plaintiff Render was issued a civil infraction citation for failure to yield, MCL 257.652, for which he was found responsible following a formal hearing. Plaintiffs brought the present action alleging that defendant was liable for the operation of the ambulance in a negligent manner. Defendant filed a motion for summary disposition arguing that plaintiffs' claim was barred by collateral estoppel because the issue of plaintiff Render's negligence had already been determined in the formal hearing. The trial court granted defendant's motion pursuant to MCR 2.116(C)(7), ruling that the issue of negligence had already

been determined in the formal hearing on the civil infraction, and that the negligence claim was therefore barred by collateral estoppel.

We review de novo a trial court's ruling on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Collateral estoppel is a basis for summary disposition pursuant to MCR 2.116(C)(7). *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 36 n 5; 620 NW2d 657 (2000). In reviewing a motion for summary disposition on the basis of collateral estoppel, we view all pleadings, admissions, affidavits, and other admissible evidence in the light most favorable to the nonmoving party. *Id.* The applicability of collateral estoppel is a question of law that is reviewed de novo. *Id.* at 34.

Collateral estoppel generally requires three elements: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment, (2) the same parties must have had a full and fair opportunity to litigate the issue, and (3) there must be mutuality of estoppel. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004). When collateral estoppel is asserted against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required. *Id.* at 695. For collateral estoppel to apply, the ultimate issue to be determined in the subsequent action "must be identical, and not merely similar" to that involved in the first action. *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994).

The ultimate issue at the formal hearing on the civil infraction citation was whether plaintiff Render violated MCL 257.652. MCL 257.652 provides in relevant part that a person is responsible for a civil infraction if he or she violates the following provision:

The driver of a vehicle about to enter or cross a highway from an alley, private road, or driveway shall come to a full stop before entering the highway and shall yield right of way to vehicles approaching on the highway.

It is clearly possible that while plaintiff Render may have violated MCL 257.652, defendant may have been negligent as well. To be sure, one of plaintiffs' theories in this case was that defendant was negligent for violating MCL 257.627, which provides in relevant part that "[a] person shall not operate a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead." However, because any potential negligence by defendant was not litigated during the civil infraction hearing, plaintiffs never received a full and fair opportunity to litigate the issue of *defendant's* potential negligence.

"Evidence of a conviction on a charge of a traffic violation is not proof of civil liability." *Dudek v Popp*, 373 Mich 300, 308; 129 NW2d 393 (1964). This is because the elements of proximate causation and comparative negligence, which are fully examined in a civil action, are not adequately considered in traffic violation proceedings. *Id.*

It is true that a violation of the motor vehicle code creates a rebuttable presumption of negligence. See *Klinke v Mitsubishi Motors Corp*, 458 Mich 582, 592; 581 NW2d 272 (1998). However, when both the plaintiff and defendant have allegedly violated the motor vehicle code, it cannot be said that one party's violation automatically makes that party more than 50 percent at fault. Indeed, both parties may have been negligent in this case, and the general principles of negligence that apply to one party—including the rebuttable presumption of negligence that

arises from a statutory violation—are equally applicable for establishing the other party’s negligence as well. *Id.* at 592 n 9. Moreover, the trial court must not make determinations of negligence and comparative negligence when those issues are reasonably in dispute. Rather, such determinations are for the jurors, who normally travel in the area and are familiar with the streets and traffic. *Musat v Harris*, 52 Mich App 442, 448-449; 217 NW2d 440 (1974).

In the instant case, viewing the evidence in a light most favorable to plaintiffs, it is possible that both plaintiff Render and defendant were responsible for violations of the motor vehicle code. However, no analysis of defendant’s potential negligence was ever conducted during the civil infraction proceedings, and such an analysis is uniquely within the province of the trier of fact.¹ The trial court erred in granting defendant’s motion for summary disposition under MCR 2.116(C)(7). Plaintiffs did not have a full and fair opportunity during the civil infraction hearing to litigate the issue of defendant’s potential negligence.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello

¹ Even assuming *arguendo* that the civil infraction proceedings conclusively established that plaintiff was the primarily negligent party, the potential comparative negligence of defendant was never considered during those proceedings. In *Placek v Sterling Heights*, 405 Mich 638; 275 NW2d 511 (1979), the seminal Michigan case that adopted the principle of comparative negligence, the plaintiff driver collided with an emergency vehicle owned by the defendant municipality. *Id.* at 651. It was argued that both the plaintiff and the defendant were negligent in the operation of their respective motor vehicles. Our Supreme Court noted that even an emergency vehicle “is not absolved of the duty to drive . . . ‘with due regard for the safety of others’” *Id.* at 670 (citation omitted). The *Placek* Court concluded that the issue of the defendant’s comparative negligence in the operation of its emergency vehicle was a question for the trier of fact. *Id.* at 679.